

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JIMMY WAYNE LEE,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-09-1042-D
)	
EVERETT VAN HOESEN,)	
)	
Defendant.)	

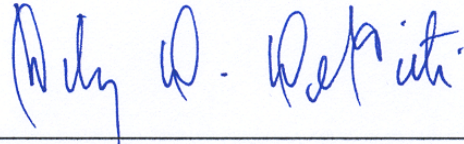
ORDER OF DISMISSAL

This matter is before the Court for review of the Report and Recommendation issued December 30, 2009, by United States Magistrate Judge Doyle W. Argo pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Judge Argo recommends a dismissal without prejudice of the action due to Plaintiff's failure to keep the Court advised of his address and failure to prosecute.

The case file reflects that Plaintiff has neither filed a timely objection to the Report nor requested additional time to object. The Court notes that, like a prior mailing from the court clerk, Plaintiff's copy of the Report was returned as undeliverable. The Court finds this fact provides no basis for an exception to the court of appeals' "firm waiver rule" because Plaintiff was responsible for giving notice of any change of address. *See Theede v. United States Dep't of Labor*, 172 F.3d 1262, 1267-68 (10th Cir. 1999) (*pro se* plaintiff who failed to provide any change of address or address correction waived right to review by failing to make a timely objection); *see also* W.D. Okla. R. LCvR5.4(a) (requiring written notice of a change of address). Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in the Report. Further, the Court finds that Plaintiff's continued failure to provide notice of his change of address and continued failure to prosecute his case confirm the correctness of Judge Argo's recommended decision.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 9] is adopted in its entirety. This action is DISMISSED without prejudice for failure to prosecute.

IT IS SO ORDERED this 22nd day of January, 2010.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE